which are excludable in computing taxable price pursuant to section 4216(a). This total charge of $10,500 was billed as follows:

Refrigerators	$10,000
Local advertising charge	500
Total charge	10,500

At the time of the manufacturer's sales of the refrigerators, it was his intention, in accordance with the agreement between him and the distributor, to make repayment to the distributor of the local advertising charge, to the extent of expenditures by the distributor for radio, television, or newspaper advertising specifically naming refrigerators or other articles taxable at the same rate under section 4111 which were manufactured by the manufacturer, and giving the location of various retail stores within the distributor's territory where such articles may be purchased. Pursuant to such agreement, the selection of the advertising medium to be employed is to be made by the distributor, who is to plan the advertising subject to approval by the manufacturer, and contract for its placement. In this example, the advertising for which the charge is made qualifies as local advertising, the charge is billed to the manufacturer's vendee as a separate charge, the manufacturer intends to repay the charge to his vendee in reimbursement of costs incurred by the vendee for local advertising, and the charge does not exceed 5 percent of $10,000. Accordingly, the manufacturer's charge of $500 for local advertising is not includible in the taxable price of the refrigerators for purposes of computing and paying the tax imposed by section 4111.

Example (2). Assume the same facts as those stated in Example (1), and assume further that prior to May 1, 1962, the manufacturer has repaid to the distributor, in reimbursement of local advertising expenses incurred by the distributor in connection with refrigerators or other articles taxable at the same rate under section 4111 sold to him by the manufacturer, $400 of the $500 billed as a local advertising charge by the manufacturer in connection with his sale of refrigerators to the distributor in the first quarter of 1961. The manufacturer is liable, as of May 1, 1962, for tax in respect of the $100 which has not been repaid to the distributor. The amount of the tax is determinable at the rate in effect under section 4111 on May 1, 1962, in respect of refrigerators and is includible in the manufacturer's return of tax under such section for the second quarter of 1962.

Example (3). During the first calendar quarter of 1961, a manufacturer sold refrigerators to one of his distributors at a total charge of $11,000, exclusive of tax, transportation charges, delivery charges, or other charges which are excludable in computing taxable price under section 4216(a). This total charge of $11,000 was billed as follows:

Refrigerators	$10,000
Local advertising charge	1,000
Total charge	11,000

At the time of the manufacturer's sales of the refrigerators, it was his intention, in accordance with the terms of a cooperative advertising plan to which the manufacturer and the distributor were parties, to make repayment to the distributor of the local advertising charge. Pursuant to the plan, the repayment would be made to the extent of expenditures by the distributor for radio, television, or newspaper advertising, initiated or obtained by him, specifically naming refrigerators or other articles taxable at the same rate under section 4111 which were manufactured by the manufacturer, and giving the location of various retail stores within the distributor's territory where such articles may be purchased. In this example, only $500 of the manufacturer's charge of $1,000 for local advertising may be excluded in determining the taxable price of the refrigerators for purposes of reporting and paying the tax imposed by section 4111. The remaining $500 may not be excluded in computing the taxable price of the refrigerators since this is the amount by which the $1,000 local advertising charge exceeds 5 percent of $10,000. Thus, the taxable price of the refrigerators in this example is $10,500.

Example (4). Assume the same facts as those stated in Example (1), except that, pursuant to the agreement between the manufacturer and the distributor, the manufacturer is to contract for the placement of the local advertising. Payment of the $500 local advertising charge is to be made by the manufacturer to the person with whom the advertising is placed in satisfaction of the manufacturer's contractual liability to such person. Under these circumstances, the manufacturer's payment of the $500 charge to the person with whom the advertising is placed does not constitute a refund to the purchaser in reimbursement of costs incurred for local advertising.

[T.D. 6635, 28 FR 1201, Feb. 7, 1963, as amended by T.D. 6686, 28 FR 11410, Oct. 24, 1963. Redesignated and amended by T.D. 7536, 43 FR 13520, Mar. 31, 1978]

§48.4216(e)–2 Limitation on aggregate of exclusions and price readjustments.

(a) *In general.* The sum of the amount excluded from taxable price in respect of charges for local advertising, as provided in section 4216(e)(1) and §48.4216(e)–1, plus the amount of the readjustments for which credits or refunds may be claimed in respect of

local advertising, as provided in section 6416(b)(1) and paragraph (c) of § 48.6416(b)–1, is subject to an over-all 5 percent limitation. This limitation applies to each manufacturer, as of the close of each calendar quarter, in respect of all articles taxable under the same section of Chapter 32 which were sold by such manufacturer in such quarter (and the preceding quarter of quarters, if any, in the calendar year). For example, a manufacturer selling articles taxable under section 4061 (relating to automobiles, trucks, buses, etc.), and also selling articles taxable under section 4111 (relating to refrigerators, quick-freeze units, etc.), who makes separate charges for local advertising in connection with his sales, or who makes reimbursement of local advertising expenses to his vendees out of moneys previously included in taxable price, in respect of any one or more articles in each of the two groups must apply the limitation separately in relation to the articles taxable under section 4061 and in relation to the articles taxable under section 4111. However, in such case, no breakdown of the separate articles taxable under section 4061, or of the separate articles taxable under section 4111, is required.

(b) *Computation of over-all 5 percent limitation*—(1) *In general.* The limitation prescribed by section 4216(e)(2) (the ''over-all 5 percent limitation'' referred to in paragraph (a) of this section) as to the total of the exclusions from price and readjustments of price which may be claimed for local advertising in respect of all articles taxable under the same section of Chapter 32 of the Code shall be computed as of the close of each calendar quarter of the calendar year. The over-all 5 percent limitation is 5 percent of the difference between (i) the amount which would constitute the total taxable price (computed at the time of sale) of all articles taxable under the same section of Chapter 32 of the Code sold by the manufacturer during the elapsed calendar quarters of the calendar year, if no part of any charge for local advertising were excludable in computing taxable price, and (ii) the total of all amounts billed as separate charges for local advertising of such articles (whatever the amount of any single charge of the total of all charges). In making the computations under subdivisions (i) and (ii) of this subparagraph, credits or refunds under section 6416(b) of tax paid on the sale of any such articles are to be disregarded and articles sold tax-free by the manufacturer are to be excluded. The amount by which the over-all 5 percent limitation computed as of the close of a particular calendar quarter in respect of articles taxable under the same section of the Code exceeds the sum of the charges for local advertising excluded in computing the taxable price and the amount of reimbursements for local advertising of such articles made during the elapsed calendar quarters of the calendar year, in respect of which credit or refund has been claimed, represents the unused portion of the over-all 5 percent limitation. Such unused portion is the maximum amount of reimbursements for local advertising in respect of which credit or refund may be claimed at the close of the particular calendar quarter, subject to the applicable conditions and limitations governing the right to claim a credit or refund in respect of local advertising (see § 48.6416(b)–1). The unused portion of the over-all 5 percent limitation as of the close of the fourth calendar quarter of a calendar year in respect of which credit or refund may not be claimed as of the close of such quarter must be disregarded in computing the over-all 5 percent limitation for any subsequent calendar quarter. Moreover, the amount of any reimbursements for local advertising made by a manufacturer in a calendar year which is in excess of the amount of such reimbursements in respect of which credit or refund may be claimed, within the over-all limitation, as of the close of the calendar year, may not subsequently serve as the basis for a credit or refund.

(2) *Alternative method of computation in certain cases.* If during the portion of the calendar year ending with the date as of which the over-all 5 percent limitation is being computed the amount of the local advertising charge separately billed by the manufacturer has not, in respect of any sale of any articles taxable under the same section of Chapter 32 of the Code, exceeded the amount excludable pursuant to paragraph (c) of § 48.4216(e)–1 in computing taxable

price, the over-all 5 percent limitation as of the close of a particular calendar quarter in respect of articles taxable under such section is 5 percent of the total taxable price (computed at the time of the sale) of all such articles sold taxpaid during the calendar year.

(3) *Allocation of amounts paid in reimbursement of expenditures for local advertising.* If a manufacturer makes contributions to a local advertising program in connection with which he makes excludable local advertising charges, it is necessary that reimbursements by the manufacturer for local advertising be attributed to the charges for local advertising, to the manufacturer's contributions, or allocated between them. Whether an amount paid by a manufacturer in reimbursement of expenses for local advertising is or is not a repayment of a local advertising charge which was excluded from taxable price under section 4216(e)(1) and §48.4216(e)–1, shall be determined on the basis of an allocation made under the agreement between the manufacturer and his vendee (or any subsequent vendee).

(c) *Examples.* The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). During the first and second calendar quarters of 1961, a manufacturer makes sales of articles taxable under section 4111 to his distributors. The total charges for such sales, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a), in computing taxable price, are as follows:

First Quarter	
Articles taxable under section 4111	$100,000
Local advertising charges	3,000
Total charge	$103,000
Second Quarter	
Articles taxable under section 4111	$150,000
Local advertising charges	4,000
Total charge	$154,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays $5,500 and $1,000 during the first and second calendar quarters of 1961, respectively, to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.

Computation as of close of first calendar quarter

1. Amount which would constitute total taxable price (computed at time of sale) if not part of any charge for local advertising were excludable in computing taxable price	$103,000
2. Amounts billed as separate charges for local advertising	3,000
3. Difference	$100,000
4. Over-all 5 percent limitation (5 percent of item 3)	$5,000
5. Amount excluded in computing taxable price	3,000
6. Unused portion of limitation	$2,000
7. Allocation, pursuant to agreement, or $5,500 paid to distributors:	
Charges for local advertising	$3,000
Contributions by manufacturer	2,500

Readjustment may be claimed in respect of that portion of the total amount repaid to the distributors which is allocated to the manufacturer's contribution ($2,500) to the extent that such portion does not exceed the unused portion of the over-all 5 percent limitation ($2,000). Accordingly, as of the close of the first calendar quarter the manufacturer may claim credit or refund in respect of a readjustment or price in the amount of $2,000.

Computation as of close of second calendar quarter

1. Amount which would constitute total taxable price (computed at time of sale) if not part of any charge for local advertising were excludable in computing taxable price $103,000+$154,000)	$257,000
2. Amounts billed as separate charges for local advertising ($3,000+$4,000)	7,000
3. Difference	$250,000
4. Over-all 5 percent limitation (5 percent of item 3)	$12,500
5. Amount excluded in computing taxable price ($3,000+$4,000) plus readjustment claimed at end of first calendar quarter ($2,000)	9,000
6. Unused portion of limitation	$3,500
7. Allocation, pursuant to agreement, of $6,500 ($5,500+$1,000) paid to distributors:	
Charges for local advertising	$3,500
Contributions by manufacturer	3,000

Although the total reimbursements for local advertising expenses attributable to contributions by the manufacturer ($3,000) does not exceed the unused portion of the over-all 5 percent limitation ($3,500), the manufacturer having taken, at the close of the first calendar quarter, a price readjustment in the amount of $2,000 in respect of his contributions is entitled at the close of the second calendar quarter to claim credit or refund in respect of a price readjustment in the amount of $1,000 ($3,000−$2,000).

Example (2). During the first calendar quarter of 1961, a manufacturer sold articles taxable under section 4111 to his distributors at a total charge of $106,000, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a), in computing taxable price. This total charge of $106,000 was billed as follows:

Articles taxable under section 4111	$100,000
Local advertising charges	6,000
Total charge	$106,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays $3,000 during the first calendar quarter of 1961 to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.

Computation as of close of first calendar quarter

1. Amount which would constitute total taxable price (computed at time of sale) if not part of any charge for local advertising were excludable in computing taxable price	$106,000
2. Amounts billed as separate charges for local advertising	6,000
3. Difference	$100,000
4. Over-all 5 percent limitation (5 percent of item 3)	$5,000
5. Amount excluded in computing taxable price (see paragraph (c) of § 48.4216(e)–1)	5,000
6. Unused portion of limitation	$0
7. Allocation, pursuant to agreement, of $3,000 paid to distributors:	
Charges for local advertising	$2,000
Contributions by manufacturer	1,000

Credit or refund may not be claimed in respect of that portion of the total amount repaid to the distributors ($3,000) which is allocated to the manufacturer's contribution ($1,000) since the amount excluded in computing taxable price is equal to the over-all 5 percent limitation.

[T.D. 6635, 28 FR 1203, Feb. 7, 1963. Redesignated and amended by T.D. 7536, 43 FR 13520, Mar. 31, 1978]

§ 48.4216(e)–3 No exclusion or readjustment for other advertising charges or reimbursements.

(a) *Exclusions from price.* No exclusion in computing the taxable price of any article sold by the manufacturer may be allowed in respect of any charge for advertising if, and to the extent that, such charge:

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) and paragraphs (a) and (b) of § 48.4216(e)–1, or

(2) Does not satisfy all of the conditions and limitations stated in section 4216(e)(1) and paragraph (c) of § 48.4216(e)–1.

(b) *Readjustments of price.* No credit or refund under section 6416(b)(1) may be allowed in respect of any amount which was included in the taxable price of an article sold by the manufacturer and which was later paid by him to his vendee in reimbursement of costs incurred for advertising, if, and to the extent that, the amount so paid:

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(e)(4) and paragraph (b) of § 48.4216(e)–1, or

(2) Is not within the limitation provided in section 4216(e)(2), as computed in accordance with § 48.4216(e)–2, as of the close of the calendar quarter in which the amount is so paid over or as of the close of any subsequent calendar quarter in the same calendar year. See, however, paragraph (c)(2)(ii) of § 48.6416(b)–1, relating to redetermination of price readjustments in cases where local advertising charges excluded from taxable price in one calendar year become taxable as of May 1 of the following calendar year.

[T.D. 6686, 28 FR 11411, Oct. 24, 1963. Redesignated and amended by T.D. 7536, 43 FR 13521, Mar. 31, 1978]

§ 48.4216(f)–1 Value of used components excluded from price of certain trucks.

For purposes of the tax imposed by section 4061(a)(1) (relating to trucks, buses, etc.), in determining the price for which an article is sold, the value of any previously used component of such article shall be excluded from the price if the person furnishing the component is the first user of the finished article. For example, where a manufacturer builds a truck for a customer who intends to use, rather than resell the truck, incorporating used parts furnished by the customer, the value of the previously used parts shall not be included in the price for which the truck is considered sold by the manufacturer.

[T.D. 7536, 43 FR 13521, Mar. 31, 1978]

§ 48.4217–1 Lease considered as sale.

For purposes of Chapter 32 of the Code, the lease of an article by a manufacturer, producer, or importer shall be considered a sale of the article. The term ''lease'' means a contract or agreement, written or verbal, which gives the lessee an exclusive, continuous right to the possession or use of a particular article for a period of time.